

REMARKS

This responds to the Office Action mailed on December 28, 2006.

Claims 1, 19, 21, 27, 31, 34 and 36 are amended to include the features of canceled claim 4, claim 4 is canceled, and no claims are added; as a result, claims 1-3, 5-13 and 16- 41 are now pending in this application.

§103 Rejection of the Claims

Claims 1-13 and 16-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McClure et al. (U.S. 6,250,548, hereinafter “McClure”) in view of Lemmons (U.S. Publication No. 2003/0028873, hereinafter “Lemmons”).

In setting out the present rejections the Office Action has used the present Specification as a guide in picking out various components of known technology from the prior art and then assembling these components as taught by the present inventors. Nowhere is there any indication that the references provide any motivation for the recited combinations. Instead, the office action merely selects a feature of the claim, states where it can be found in one of the references and then states it would be obvious to combine the references. In short, it appears the teachings of the present application have been used as a blueprint to gather together and assemble various components of the prior art in the manner contemplated and taught by the present applicants, without any indication that the combination is suggested by the references or even ordinary skill in the art and without citing any substantive motivation for making the combination. This is a classic example of the use of hindsight reconstruction, and cannot properly be used as grounds for rejecting the present claims.

The U.S. Court of Appeals for the Federal Circuit has rejected such applications of hindsight by an examiner by specifically indicating that when an obviousness rejection is made based upon a combination of references, an examiner "must show reasons that the skilled artisan, confronted with the same problems as the inventor *and with no knowledge of the claimed invention*, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (emphasis added). Merely indicating, as in the present Office Action, that the claimed invention would be obvious to one of ordinary skill in the art, based on the combination of the references is inadequate. *Id.*

Instead, what is needed is a showing of motivation, either from the references themselves or the knowledge of those of ordinary skill in the art, for the combination being relied upon. *Id.*

In the present case, there has been no showing of such motivation. Instead, the Office Action deconstructs the subject matter of the claims into its constituent components, states where each such component may be found in one of the cited references, and then concludes that it would have been obvious to combine the references to arrive at the claimed invention merely based on a conclusory statement that the combination would make the system more flexible and robust. Specifically, Lemmons is relied upon for the ability to cast a vote in a television receiver environment. However, the disclosure in Lemmons merely refers to *accessing links to the world-wide-web (WWW)* via a graphical user interface to perform actions outside of the television receiver functionality but related to the programming, such as casting a vote for a character on a television show. The Examiner's following reference to the storage of data files at a head-end and enhanced video being transmitted via a satellite link are totally unrelated to the three sentence disclosure of utilizing WWW links to cast a vote. It is therefore unclear how these citations of Lemmon provide even the requisite components or the motivation to combine the references to teach, "broadcasting an interactive voting application to a plurality of remote broadcast receivers from at least one of a list including a satellite uplink and a cable head-end," as recited in claim 1.

In sum, this bare bones analysis is not sufficient to support the present rejections. The burden is on the Examiner to show *why* one would be so motivated as to select the claimed elements to come up with the combination. *Rouffet* at 1357-1358 ("If such a rote invocation could suffice to supply a motivation to combine, the more sophisticated scientific fields would rarely, if ever, experience a patentable technical advance. Instead, in complex scientific fields the [Patent Office] could routinely identify the prior art elements in an application, invoke the lofty level of skill, and rest its case for rejection. To counter this potential weakness in the obviousness construct, the suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness.") Accordingly, the present rejections should be removed.

Turning now to the cited references, Applicant respectfully submits that the Office Action did not make out a *prima facie* case of obviousness because even if combined, the cited references fail to teach or suggest all of the elements of Applicant's claimed invention.

Claim 1 as amended recites:

A computer-implemented method of collecting votes from at least some of a group of voters, comprising:

 broadcasting an interactive voting application to a plurality of remote broadcast receivers from at least one of a list including a satellite uplink and a cable head-end;

 receiving from at least some of the broadcast receivers authentication information associated with one or more voters;

 authenticating the voters by comparing the received authentication information with stored authentication information associated with the voter; and

 receiving electronic ballots from the broadcast receivers, each electronic ballot comprising a set of votes inputted into the broadcast receiver by a voter using the interactive voting application, each vote being associated with a sequential identification number.

McClure has been analyzed in the previous response. However, the office action at page 4, under discussion of claim 4, cites a quote from McClure and alleges that it discloses the ballot data including a plurality of votes, each vote associated with a sequential identification number.

In the cited quote McClure describes:

Election officials verify the information supplied by the voter and approve the assignment of an issue number for the voter. The issue number is electronically sent to the voter via the Internet to the address supplied by the voter and defines the proper ballot style for the voter. (Col. 36, lines 59-63)

McClure further describes:

The issue number printed on the ballot and subsequently read by the document scanner is used to manage the eligibility of voters. . . . This information can further be used in the precinct polling place to prohibit a voter who has voted absentee from voting on election day. When the absentee ballot 180 is produced, the name of the voter is associated with the unique number assigned by the EAS 60. . . . When the ballot is returned and the issue number read, it is matched in the EAS data with the previously stored number representing that the ballot was produced and sent out. After matching the numbers, the association with the voter is severed and the name or voter registration number of the voter is randomly stored (234) in a memory location. (Col. 33, lines 23-41)

In the above texts, McClure discloses approval of the issue number assigned to a voter. The issue number is printed on the ballot and when the ballot is returned, the issue number is read and matched with the previously stored number representing that ballot, as it was produced and sent out. As such, each ballot in McClure has one issue number that identifies that ballot. In contrast, the ballot in claim 1 comprises a set of votes inputted from a voter, and each vote is associated with a sequential identification number. Consequently the issue number in McClure is not the same as the sequential number that each of the plurality of votes on each ballot in claim 1 is associated with. Thus, McClure does not teach “*each electronic ballot comprising a set of votes inputted into the broadcast receiver by a voter using the interactive voting application, each vote being associated with a sequential identification number,*” as recited in claim 1.

Adding the teachings of Lemmons fail to cure the defects in McClure. Lemmons discusses the viewer may be able to activate links to the WWW and being able to cast vote, for example, on which character the viewer liked the best during a particular television program such as the “Survivor” series. The viewer may also be able to cast vote for elections, read about their local political representatives by clicking on an interactive link (Paragraph 0047). However, Lemmons does not teach any *kind of electronic ballot comprising a set of votes each being associated with a sequential identification number*. In other words, Lemmons does not disclose “*each electronic ballot comprising a set of votes inputted into the broadcast receiver by a voter using the interactive voting application, each vote being associated with a sequential identification number,*” as recited in amended claim 1.

Therefore, McClure and Lemmons, individually or in combination, fail to teach or suggest each and every element of claim 1 and thus the combination do not render the claim obvious. As such, claim 1 and its direct or indirect dependent claims 2-3, 5-13 and 16-18 are allowable and it is respectfully requested the claim rejections under 35 U.S.C. § 103(a) be withdrawn.

Independent claims 19, 21, 27, 31, 34 and 36 have been amended to include substantially the same limitation discussed above. As such, Applicant respectfully submits that at least for the same reasons set forth above, claims 19, 21, 27, 31, 34 and 36, and their direct or indirect dependent claims 20, 22-26, 28-30, 32-33, 35, 37- 41 are allowable and it is requested the claim rejections under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at 408-278-4053 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any canceled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 - EXPEDITED PROCEDURE

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Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 28 day of February, 2007.

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